

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 542

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Section 1279.4 to the Health and Safety Code, to add Sections 12693.56, 12699.06, and 12739.5 to the Insurance Code, and to add Article 5.5 (commencing with Section 14183) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 542, as amended, Feuer. Hospital acquired conditions.

Existing law establishes various programs for the prevention of disease and the promotion of health, including, but not limited to, the licensing and regulation of health facilities to be administered by the State Department of Public Health. Existing law requires specified health facilities to report patient adverse events to the department within 5 days. A violation of these provisions is a misdemeanor.

This bill would require the medical director and the director of nursing of a hospital to annually report adverse events and hospital acquired conditions to its governing board.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons.

This bill would require the State Department of Health Care Services to convene a technical working group to evaluate options for implementing nonpayment policies and practices for hospital acquired conditions for the fee-for-service Medi-Cal program, as specified. This bill would require the technical working group to provide the best options to the Director of Health Care Services, the Secretary of California Health and Human Services, and the Legislature by February 1, 2011. This bill would also require the department to implement nonpayment policies and procedures for hospital acquired conditions for the fee-for-service Medi-Cal program ~~by July 1, 2011~~, as specified.

Existing law imposes various functions and duties on the Managed Risk Medical Insurance Board with respect to the regulation and administration of various insurance programs, including the Healthy Families Program.

This bill would require certain managed care plans contracting with the board to implement nonpayment policies and practices for hospital acquired conditions that are consistent with those adopted by the Medi-Cal program through their contracts with health *care* facilities, *as defined*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Patients seeking medical treatment have a right to quality
- 4 medical care delivered in a timely, safe, and appropriate manner.

1 (b) Licensed health facilities are vital community resources that
2 perform life-saving procedures and ensure the health and welfare
3 of the general public.

4 (c) Despite the best intentions of a health facility, when a
5 hospital acquired condition occurs, a patient can be harmed,
6 potentially leading to serious disability or even death.

7 (d) Most hospital acquired conditions can be prevented through
8 ongoing health care provider education and established safety plans
9 and procedures. It is the policy of the State of California to
10 encourage constant monitoring and continuous improvement in
11 health care quality processes to ensure patient safety.

12 (e) The recently enacted federal Patient Protection and
13 Affordable Care Act (Public Law 111-148) established as a national
14 policy that state Medicaid programs should no longer pay for
15 hospital acquired conditions.

16 (f) It is the policy of the State of California that patients and
17 purchasers of health care services should not be billed for hospital
18 acquired conditions *that are reasonably preventable by the*
19 *adoption and implementation of evidence-based guidelines*. It is
20 also the policy of the State of California that hospital acquired
21 conditions *that are reasonably preventable by the adoption and*
22 *implementation of evidence-based guidelines* should not be
23 reimbursed by patients or purchasers of health care services.

24 (g) Patients who have been harmed by a hospital acquired
25 condition must receive the medically necessary followup care to
26 correct or treat the complications or consequences of the hospital
27 acquired condition, to the extent possible. Medically necessary
28 followup care and services should be reimbursed.

29 (h) The development of policies and procedures for the
30 nonbilling and nonpayment of hospital acquired conditions is a
31 complex process that requires expertise from many sectors of the
32 health care delivery system. While these policies and procedures
33 are being established, the State of California encourages private
34 sector solutions that bring improvement in the delivery of health
35 care services and a reduction in the occurrence of hospital acquired
36 conditions.

37 SEC. 2. Section 1279.4 is added to the Health and Safety Code,
38 to read:

39 1279.4. (a) The medical director and the director of nursing
40 of each health facility, as defined by subdivision (a), (b), or (f) of

1 Section 1250, shall report annually to the board of directors or
2 other similar governing body the following:

3 (1) The number of adverse events and hospital acquired
4 conditions that occurred in the *health* facility in the most recent
5 12-month period.

6 (2) The outcomes for each patient involved, *if known*.

7 (3) A comparison to comparable institutions of rates of adverse
8 events and hospital acquired conditions, if this data exists and is
9 publicly available.

10 (b) No communication of data or information pursuant to this
11 section by an officer or employee of the corporation to the
12 governing body shall constitute a waiver of privileges preserved
13 by Section 1156, 1156.1, or 1157 of the Evidence Code or Section
14 1370.

15 SEC. 3. Section 12693.56 is added to the Insurance Code, to
16 read:

17 12693.56. (a) For purposes of this section, “health care
18 facility” ~~means a health care entity licensed pursuant to subdivision~~
19 ~~(a), (b), or (f) of Section 1250 of the Health and Safety Code, and~~
20 ~~a surgical clinic licensed pursuant to paragraph (1) of subdivision~~
21 ~~(b) of Section 1204 of the Health and Safety Code. means a health~~
22 *care entity that is subject to the federal regulations promulgated*
23 *pursuant to Section 2702 of Subtitle I of Title II of the Patient*
24 *Protection and Affordable Care Act (Public Law 111-148).*

25 (b) The board shall implement nonpayment policies and
26 practices consistent with those adopted by the Medi-Cal program
27 pursuant to Article 5.5 (commencing with Section 14183) of
28 Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
29 Code, for the program, by requiring managed care plans contracting
30 with the board to implement nonpayment policies and practices
31 through their contracts with health *care* facilities. This subdivision
32 shall be implemented only if, and to the extent that, federal
33 financial participation is available and is not jeopardized.

34 (c) A health *care* facility shall not charge a patient *any*
35 *applicable cost-sharing amounts* for care and services for which
36 payment is denied by the program, including its participating
37 health, dental, and vision plans.

38 ~~(d) The board may contract with a review organization that~~
39 ~~meets all applicable state and federal requirements, including~~
40 ~~Sections 1320c-1 and 1320c-3 of Title 42 of the United States~~

1 Code, in terms of composition and function, for the purposes of
2 carrying out the nonpayment policies and practices adopted
3 pursuant to Article 5.5 (commencing with Section 14183) of
4 Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
5 Code, for the Healthy Families Program and to the extent feasible,
6 for all other programs administered by the board.

7 SEC. 4. Section 12699.06 is added to the Insurance Code, to
8 read:

9 12699.06. (a) For purposes of this part, "health care facility"
10 means a health care entity licensed pursuant to subdivision (a),
11 (b), or (f) of Section 1250 of the Health and Safety Code, and a
12 surgical clinic licensed pursuant to paragraph (1) of subdivision
13 (b) of Section 1204 of the Health and Safety Code: *a health care*
14 *entity that is subject to the federal regulations promulgated*
15 *pursuant to Section 2702 of Subtitle I of Title II of the Patient*
16 *Protection and Affordable Care Act (Public Law 111-148).*

17 (b) The board shall implement nonpayment policies and
18 practices consistent with those adopted by the Medi-Cal program
19 pursuant to Article 5.5 (commencing with Section 14183) of
20 Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
21 Code, for the program, by requiring managed care plans contracting
22 with the board to implement nonpayment policies and practices
23 through their contracts with health care facilities. This subdivision
24 shall be implemented only if, and to the extent that, federal
25 financial participation is available and is not jeopardized.

26 (c) A health care facility shall not charge a patient *any*
27 *applicable cost-sharing amounts* for care and services for which
28 payment is denied by the program, including its participating health
29 plans.

30 (d) ~~The board may contract with a review organization that~~
31 ~~meets all applicable state and federal requirements, including~~
32 ~~Sections 1320c-1 and 1320c-3 of Title 42 of the United States~~
33 ~~Code, in terms of composition and function, for the purposes of~~
34 ~~carrying out the nonpayment policies and practices adopted~~
35 ~~pursuant to Article 5.5 (commencing with Section 14183) of~~
36 ~~Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions~~
37 ~~Code, for the Healthy Families Program and to the extent feasible,~~
38 ~~for all other programs administered by the board.~~

39 SEC. 5. Section 12739.5 is added to the Insurance Code, to
40 read:

1 12739.5. (a) For purposes of this part, “health care facility”
2 means ~~a health care entity licensed pursuant to subdivision (a);~~
3 ~~(b), or (f) of Section 1250 of the Health and Safety Code, and a~~
4 ~~surgical clinic licensed pursuant to paragraph (1) of subdivision~~
5 ~~(b) of Section 1204 of the Health and Safety Code; a health care~~
6 ~~entity that is subject to the federal regulations promulgated~~
7 ~~pursuant to Section 2702 of Subtitle I of Title II of the Patient~~
8 ~~Protection and Affordable Care Act (Public Law 111-148).~~

9 (b) The board shall implement nonpayment policies and
10 practices consistent with those adopted by the Medi-Cal program
11 pursuant to Article 5.5 (commencing with Section 14183) of
12 Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
13 Code, for the program, by requiring managed care plans contracting
14 with the board to implement nonpayment policies and practices
15 through their contracts with health care facilities.

16 (c) A health care facility shall not charge a patient *any*
17 *applicable cost-sharing amounts* for care and services for which
18 payment is denied by the program, including its participating health
19 plans.

20 ~~(d) The board may contract with a review organization that~~
21 ~~meets all applicable state and federal requirements, including~~
22 ~~Sections 1320c-1 and 1320c-3 of Title 42 of the United States~~
23 ~~Code, in terms of composition and function, for the purposes of~~
24 ~~carrying out the nonpayment policies and practices adopted~~
25 ~~pursuant to Article 5.5 (commencing with Section 14183) of~~
26 ~~Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions~~
27 ~~Code, for the Healthy Families Program and to the extent feasible,~~
28 ~~for all other programs administered by the board.~~

29 SEC. 6. Article 5.5 (commencing with Section 14183) is added
30 to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
31 Code, to read:

32
33 Article 5.5. Hospital Acquired Conditions
34

35 14183. (a) (1) The department shall convene a technical
36 working group to evaluate options for implementing nonpayment
37 policies and procedures for hospital acquired conditions for the
38 fee-for-service Medi-Cal program consistent with federal laws and
39 regulations, including, but not limited to, Section 2702 of Subtitle
40 I of Title II of the federal Patient Protection and Affordable Care

1 Act (Public Law 111-148). By February 1, 2011, the technical
2 working group shall provide recommendations to the Director of
3 Health Care Services, the Secretary of California Health and
4 Human Services, and the Legislature on the best options for
5 implementing nonpayment policies and procedures for hospital
6 acquired conditions for the fee-for-service Medi-Cal program
7 consistent with federal laws and regulations, including, but not
8 limited to, Section 2702 of Subtitle I of Title II of the federal
9 Patient Protection and Affordable Care Act (*Public Law 111-148*).

10 (2) The technical working group convened pursuant to paragraph
11 (1) shall include, but not be limited to, all of the following:

12 (A) Consumer advocates.

13 (B) Experts the department deems necessary for the technical
14 working group to effectively carry out its functions.

15 (C) Pediatricians or physicians in current practice in California
16 who have relevant experience in reducing the incidence of hospital
17 acquired conditions or adverse events.

18 (D) Representatives of children's or other specialty hospitals.

19 (E) Representatives of the department.

20 (F) Representatives of the Department of Managed Health Care.

21 (G) Representatives of health care service plans or health
22 insurers.

23 (H) Representatives of large employers that purchase group
24 health care coverage for their employees and that are neither
25 suppliers nor brokers of health care coverage.

26 (I) Representatives of nonnursing, nonphysician hospital support
27 staff.

28 (J) Representatives of the Office of Statewide Health Planning
29 and Development.

30 (K) Representatives of private hospitals.

31 (L) Representatives of public hospitals.

32 (M) *Representatives of hospitals operated by the University of*
33 *California.*

34 (3) *Each member appointed to the technical working group*
35 *pursuant to paragraph (2) shall have expertise in hospital*
36 *reimbursement.*

37 ~~(3)~~

38 (4) The technical working group may consult with individuals
39 possessing relevant clinical or other health care expertise to assist

1 in the development of the recommendations provided pursuant to
2 this section.

3 ~~(4)~~

4 (5) The technical working group shall provide an opportunity
5 for members of the public to submit comments to the technical
6 working group.

7 ~~(5)~~

8 (6) (A) The requirement for submitting a report imposed under
9 this subdivision is inoperative on February 1, 2015, pursuant to
10 Section 10231.5 of the Government Code.

11 (B) A report to be submitted pursuant to this subdivision shall
12 be submitted in compliance with Section 9795 of the Government
13 Code.

14 (b) The department shall implement nonpayment policies and
15 procedures for hospital acquired conditions for the fee-for-service
16 Medi-Cal program by July 1, 2011, that are consistent with federal
17 regulations promulgated pursuant to Section 2702 of Subtitle I of
18 Title II of the federal Patient Protection and Affordable Care Act
19 (Public Law 111-148). In implementing the nonpayment policies
20 and procedures the department shall strongly consider the
21 recommendations submitted pursuant to subdivision (a) by the
22 technical working group.

23 (c) Medi-Cal managed care plans contracting with the
24 department pursuant to Chapter 7 (commencing with Section
25 14000), Chapter 8 (commencing with Section 14200), or Chapter
26 8.75 (commencing with Section 14590) of Part 3 of Division 9,
27 shall be required to implement similar nonpayment policies and
28 practices through their contracts with health *care* facilities.

29 (d) A health *care* facility shall not charge a patient *any*
30 *applicable cost-sharing amounts* for care and services for which
31 payment is denied by the Medi-Cal program or any other program
32 administered by the department pursuant to this article.

33 ~~(e) Notwithstanding any other law, and subject to applicable~~
34 ~~federal requirements, a health facility shall exclude its costs related~~
35 ~~to hospital acquired conditions subject to the nonpayment policies~~
36 ~~implemented pursuant to this article from both of the following:~~

37 ~~(1) The Annual Disclosure Report submitted by the health~~
38 ~~facility to the Office of Statewide Health Planning and~~
39 ~~Development and which is used in the calculation of payment~~

1 ~~adjustments under the Disproportionate Share Hospital Program~~
2 ~~pursuant to Article 5.2 (commencing with Section 14166).~~

3 ~~(2) The Medi-Cal 2552-96 cost report, and any other data,~~
4 ~~submitted by the health facility to the department and which is~~
5 ~~used for claiming reimbursement from the Safety Net Care Pool~~
6 ~~pursuant to Article 5.2 (commencing with Section 14166).~~

7 ~~(f)~~

8 ~~(e) This article shall be implemented only if, and to the extent~~
9 ~~that, federal financial participation is available and is not~~
10 ~~jeopardized for programs receiving federal funds.~~

11 ~~(g) The department may contract with a review organization~~
12 ~~that meets all applicable state and federal requirements, including~~
13 ~~Sections 1320c-1 and 1320c-3 of Title 42 of the United States~~
14 ~~Code, in terms of composition and function, for the purposes of~~
15 ~~carrying out nonpayment policies and practices adopted pursuant~~
16 ~~to this article.~~

17 ~~(h) (1)~~

18 ~~(f) This article shall not be interpreted or implemented in a way~~
19 ~~that would limit patient access to needed health care services or~~
20 ~~payment to a health care facility for medically necessary followup~~
21 ~~care to correct or treat the complications or consequences of a~~
22 ~~hospital acquired condition or for the care originally sought by the~~
23 ~~patient.~~

24 ~~(2) For state and local government health care programs that~~
25 ~~receive federal funds, this article shall be implemented only to the~~
26 ~~extent that federal financial participation for those programs is not~~
27 ~~jeopardized.~~

28 ~~(i)~~

29 ~~(g) Nothing in this article shall be construed to authorize the~~
30 ~~disclosure of confidential information concerning contracted rates~~
31 ~~between health care providers and payers or another data source.~~
32 ~~Nothing in this article shall be construed to prevent the disclosure~~
33 ~~of information on the relative or comparative cost to payers or~~
34 ~~purchasers of health care services, consistent with the requirements~~
35 ~~of this article.~~

36 ~~(j) (1) Patient social security numbers and other data elements~~
37 ~~that the department determines may be used to determine the~~
38 ~~identity of an individual patient shall not be deemed public records~~
39 ~~for purposes of the California Public Records Act (Chapter 3.5~~

1 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
2 ~~Government Code).~~

3 ~~(2)~~

4 *(h) (1)* No person reporting data pursuant to this article shall
5 be liable for damages in an action based on the use or misuse of
6 patient-identifiable data ~~that has been by the department that has~~
7 *been properly* mailed or otherwise *properly* transmitted to the
8 department pursuant to the requirements of this article.

9 ~~(3)~~

10 (2) No communication of data or information to the department
11 pursuant to this article shall constitute a waiver of privileges
12 preserved pursuant to Sections 1156, 1156.1, and 1157 of the
13 Evidence Code, and Section 1370 of the Health and Safety Code.

14 ~~(4)~~

15 (3) Information, documents, and records from original sources
16 subject to discovery or introduction into evidence shall not be
17 immune from discovery or evidence because the information,
18 document, or record was also provided to the department pursuant
19 to this article.

20 ~~(k)~~

21 *(i)* For purposes of this article, “health care facility” means a
22 health care entity licensed pursuant to subdivision (a), (b), or (f)
23 of Section 1250 of the Health and Safety Code, and a surgical
24 clinic licensed pursuant to paragraph (1) of subdivision (b) of
25 Section 1204 of the Health and Safety Code. *care entity that is*
26 *subject to the federal regulations promulgated pursuant to Section*
27 *2702 of Subtitle I of Title II of the Patient Protection and*
28 *Affordable Care Act (Public Law 111-148).*

29 SEC. 7. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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